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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 v.  
16 CARLOS E. KEPKE,  
17 Defendant.

Case No. 3:21-CR-00155-JD

**UNOPPOSED EX PARTE MOTION TO  
SET CONFERENCE FOR ZOOM  
VIDEOCONFERENCE;  
DECLARATION IN SUPPORT OF  
MOTION; [PROPOSED] ORDER**

Date: March 21, 2022  
Time: 10:30 a.m.  
Courtroom: 11  
Judge: Hon. James Donato

**EX PARTE MOTION**

Pursuant to Criminal Local Rules 47-1, 47-3, and 2-1, Civil Local Rule 7-11, and Federal Rule of Criminal Procedure 43, Defendant Carlos E. Kepke (“Kepke”), by and through his counsel, hereby respectfully moves the Court to issue an Order setting the March 21 status conference for a Zoom videoconference.

Good cause in support of this motion is set forth more fully in the attached declaration of Grant P. Fondo (“Fondo Decl.”), counsel for Kepke, including a more detailed discussion of Kepke’s current medical condition. Briefly, Kepke, who is an eighty-two-year-old long-term resident of Houston, Texas, has an extended history of heart disease and heart failure, having suffered two heart attacks and other heart-related medical procedures. Fondo Decl., ¶¶ 2, 6-9. The most recent heart attack, in late 2019, required triple-bypass open-heart surgery and involved complications that resulted in an extended stay in the intensive care unit. *Id.*

Although Kepke is vaccinated against COVID-19, travel between Houston and San Francisco to attend the March 21 conference presents a nontrivial risk of his being exposed to a COVID-19 carrier and the attendant risk of a serious breakthrough infection. Fondo Decl., ¶¶ 10-13. Such travel also carries the risk that, if exposed, Kepke will pass the infection to his spouse, who herself suffered a heart attack recently. *Id.*, ¶ 10. Not only does this request protect Kepke, it also ensures the protection of the court and its staff. Despite the lowering of confirmed cases in San Francisco County and Harris County, Texas, where Kepke resides, the daily average confirmed cases are still high. *Id.*, ¶ 11. Setting the March 21 status conference for a Zoom videoconference will assist in the prevention of the spread of the virus and of infection of the court and its staff.

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**DECLARATION OF GRANT P. FONDO**

I, Grant P. Fondo, declare as follows:

1. I am a partner with the law firm Goodwin Procter LLP and a member of good standing of the bar of this Court. I represent Defendant Carlos E. Kepke (“Kepke”) in the above-captioned matter. I submit this Declaration in connection with the Unopposed Ex Parte Motion to Set Conference for Zoom Videoconference. Unless stated otherwise, this declaration is based on my personal knowledge; if called as a witness I could and would testify as follows:

2. Kepke, an eighty-two-year-old long-term resident of Houston, Texas, made his initial appearance in the above-captioned matter on April 22, 2021 by Zoom videoconference, before Magistrate Judge Jacqueline Scott Corley. Judge Corley then entered an order setting Kepke’s conditions of release and setting a status conference hearing for June 30, 2021, before Judge James Donato.

3. On June 30, 2021, Kepke appeared before Judge Donato by Zoom videoconference. Judge Donato then entered an order setting a status conference for October 13, 2021.

4. On November 1, 2021, Kepke appeared before Judge Donato by Zoom videoconference. Judge Donato then entered an order setting a conference for January 24, 2022.

5. On January 24, 2022, Kepke appeared before Judge Donato by Zoom videoconference. Judge Donato then entered an order setting a status conference for March 21, 2022.

6. Kepke is retired, and a long-time resident of Houston, Texas. Kepke, whose family has a history of heart disease, has himself suffered two heart attacks, various heart-related medical procedures, and additional health issues, which are not detailed herein for the sake of brevity. Kepke’s two heart attacks, in addition to his advanced age, mean he is at greater risk for complications from COVID-19, including, but not limited to, blood clotting that may result in Kepke suffering a third heart attack.

7. Kepke suffered his first heart attack in 1971 resulting from blockage in his coronary arteries. As a result, Kepke spent over a week in the intensive care unit (the “ICU”) and has seen a cardiologist every year since 1971 to monitor his coronary arteries.

1           8.       Kepke suffered his second heart attack in November 2019. The second heart attack  
2 required invasive procedures and an extended stay in the ICU. While still recovering from his  
3 second heart attack in the ICU, Kepke experienced acute atrial fibrillation. Kepke's acute atrial  
4 fibrillation required repeated electrical shocks to his heart and immediate triple-bypass open-heart  
5 surgery. While medical professionals performed the triple-bypass open-heart surgery, they  
6 discovered a seventy-five percent (75%) blockage in Kepke's heart as a result of stenosis and  
7 calcium deposits. This significant blockage likely would have been fatal to Kepke had it not been  
8 discovered during the triple-bypass open-heart surgery. Following his triple-bypass open-heart  
9 surgery, Kepke again suffered complications including an irregular heartbeat that required  
10 additional electrical shocks to his heart.

11           9.       I understand that Kepke's previous atrial-fibrillation episodes significantly increase  
12 his risk of future episodes of atrial fibrillation. In addition, the calcium deposits in Kepke's  
13 arteries make it impossible for Kepke to receive a stent—a common treatment for artery  
14 narrowing—forcing Kepke to take several medications and to receive regular monitoring for  
15 further blockage. As a result of Kepke's cardiac conditions, Kepke is regularly monitored for a  
16 weakened aortic valve that may require a replacement. At his advanced age, there is no guarantee  
17 Kepke would survive extensive, invasive surgeries, let alone a third cardiac event, which I  
18 understand a COVID-19 infection might precipitate.

19           10.      Kepke is vaccinated against COVID-19. Still, the frequency of breakthrough  
20 infections and the surge of coronavirus infections caused by the omicron variant make Kepke  
21 worried about getting infected with COVID-19 or transmitting the virus at home to his wife, who  
22 herself suffered a heart attack in the last two years.

23           11.      As of March 7, 2022, the New York Times reported that in Harris County the  
24 “[c]ases have decreased recently but are still high,” (Tracking Coronavirus in Harris County,  
25 Texas: Latest Map and Case Count [Mar. 7, 2022],  
26 <https://www.nytimes.com/interactive/2021/us/harris-texas-covid-cases.html>), and that in San  
27 Francisco County, the “[c]ases have decreased recently but are still very high.” (Tracking  
28 Coronavirus in San Francisco County, Calif.: Latest Map and Case Count [Mar. 7, 2022],

1 <https://www.nytimes.com/interactive/2021/us/san-francisco-california-covid-cases.html>.)

2 12. Appearing in person at the March 21 conference would require Kepke to travel  
3 between Houston and San Francisco, including:

- 4 a. At least two days of travel including two flights, between San Francisco and
- 5 Houston, Texas;
- 6 b. One night of hotel lodging;
- 7 c. Transportation to and from the San Francisco airport; and
- 8 d. Transportation to and from the Court.

9 13. Kepke is concerned about his exposure to COVID-19 throughout such travel. His  
10 flights, hotel stay, and car rides, each would require Kepke enter a confined space with individuals  
11 who may be asymptomatic carriers and, thus, potentially less sensitive to the best practice each of  
12 us has had to adopt during this challenging time. Given Kepke's age and his cardiac conditions,  
13 my understanding is that Kepke's concern is nontrivial.

14 14. I have previously advised Kepke of his rights under Rule 43 of the Federal Rules of  
15 Criminal Procedure. Kepke has confirmed that he waives any right to attend the March 21  
16 conference in person and respectfully requests the Court set the March 21 conference for a Zoom  
17 videoconference.

18 15. On March 4, 2022, I spoke with counsel for the United States, AUSA, Michael  
19 Pitman, to determine whether the Government had any objection to all parties appearing by Zoom  
20 instead of in person at the March 21 conference. AUSA Pitman then confirmed that the  
21 Government had no objection to all parties appearing by Zoom for the March 21 conference.

22  
23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct.

25 Executed on March 7, 2022.

26  
27 /s/ *Grant P. Fondo*  
28 GRANT P. FONDO

**[PROPOSED] ORDER**

Upon consideration of the Unopposed Ex Parte Motion of Defendant Carlos E. Kepke (“Kepke”) and the Declaration of Grant P. Fondo, IT IS HEREBY ORDERED as follows:

1. Kepke’s personal appearance is waived for the March 21, 2022, conference.
2. The March 21 conference shall proceed by Zoom videoconference.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. James Donato  
UNITED STATES DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **March 7, 2022**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **March 7, 2022**.

/s/ Grant P. Fondo  
GRANT FONDO